

### REMARKS

In the Office Action, Claim 6 was rejected over the prior art as discussed below. Claim 6 has been amended and Claims 43-49 have been added herein. No claim has been canceled. Thus, Claims 6 and 43-49 are pending for further consideration upon entry of this amendment.

#### Personal Interview

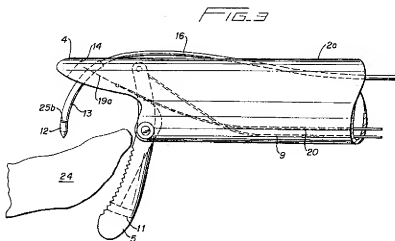
Applicant and Applicant's representative thank Examiner Cumberledge for the courteous and helpful personal interview conducted on August 20, 2008 (summarized above).

#### Richardson et al. Does Not Anticipate Claim 6

Claim 6 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,454,823 to Richardson et al. Applicant respectfully disagrees with the present rejection. However, solely to expedite allowance, Claim 6 has been amended to further distinguish the Richardson reference.

The Richardson reference discloses "a suturing arrangement 3 comprising an upper jaw extension 4 integral with the arm portion 2a and a pivotal lower jaw 5 pivotally connected to the arm portion 2a." Richardson et al., col. 3; ll. 15-18. Referring to Figures 3 and 4, reproduced below, the Richardson reference indicates that:

Next the trigger 10 is manipulated to push control cable 9 forward causing the lower jaw 5 to pivot about pivot mechanism 8 to the open position shown in FIG. 3. It should be noted that the securing arm 19a remains in engagement with the upper portion 15 of the needle 13 and is thereby secured in slot 14. Body tissue to be sewn is then placed between jaws 4 and 5 as shown in FIG. 3 with the needle tip 12 located above the tissue.



Subsequently, as shown in FIG. 4, the cable 9 is retracted causing jaws 4,5 to pivotally close, in so doing forcing the needle 13 through the tissue 24 such that the needle tip 12 is relocated in the bore 11. Once this stage has been effected, cable 20 is retracted causing the "U" shaped securing member to slide and flex along its length with the lower arm 19b intersecting the bore 11 and engaging with notch 25b in the tip 12 of the needle 13, securing the needle relative to the lower jaw 5. The jaws 4,5 are then opened by forward motion of cable 9 as previously described causing needle 13 to be pulled clean through the tissue 24.

Richardson et al., column 4, lines 26-45 (emphasis added).

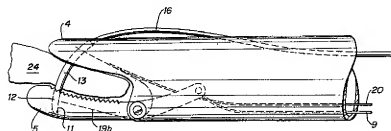


FIG. 4

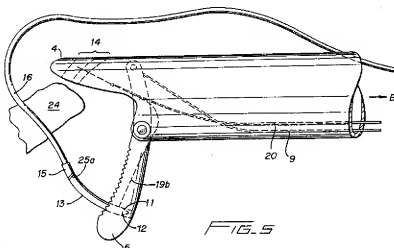


FIG. 5

In contrast, Claim 6 recites:

A method of suturing a portion of biological tissue using a suturing device having a longitudinal axis, a needle attached to a suture, a needle driver, and at least one needle holder, the method comprising:

- (a) positioning a distal needle holder in a distal position relative to the portion of biological tissue, the distal needle holder adapted to releasably hold the needle, positioning a proximal needle holder in a proximal position relative to the portion of biological tissue, the proximal needle holder adapted to releasably hold the needle, and positioning a

distal end of the needle driver in a proximal position relative to the portion of biological tissue;

(b) positioning the needle in either the proximal position or the distal position;

(c) moving the needle driver longitudinally in a first direction along a path substantially parallel to the longitudinal axis such that the needle and suture pass through the portion of biological tissue, thereby forming a suture incision through which the suture passes; and

(d) repeating (a) - (c) to form a series of stitches;  
wherein the needle is positioned in a proximal position relative to the portion of biological tissue by releasably holding the needle in a proximal needle holder positioned in a proximal position relative to the portion of biological tissue; and

wherein the needle is positioned in the proximal position relative to the portion of biological tissue by releasably holding the needle with the distal needle holder positioned in the distal position relative to the portion of biological tissue and translating the distal needle holder to the proximal position.

As discussed during the interview, the Richardson reference does not teach or suggest the limitations recited in Claim 6, including, for example, the recited steps involving the proximal and distal needle holders.

Thus, Applicant respectfully submits that Claim 6 clearly and nonobviously defines over the Richardson reference for at least the reasons cited above.

#### **New Claims 43-49**

Claims 43-49 have been added and do not add new matter. New Claims 43-49 are readable on the elected species.

New Claims 44-48 are similar to original Claims 2, 4, 5, 9, and 10, respectively, which were canceled, but differ from those claims in their dependencies. Applicant respectfully submits that Claims 43-48 are allowable not only because they depend either directly or indirectly from Claim 6, but also on their own merit.

New Claim 49 is the same as original Claim 16, which was canceled. In the Office Action dated July 26, 2002, Claim 16 was indicated as allowed. Later, in the Office Action mailed October 29, 2007, the Office Action Summary indicated rejection of Claim 16. However, the Detailed Action provided no rationale for rejection of Claim 16 over the newly applied art.

Claim 16 was canceled in the Amendment dated March 28, 2008 to expedite issuance of the present Application. Canceled Claim 16 has been reintroduced as New Claim 49 to pursue subject matter for which no reason for rejection has been set forth by the Examiner.

As discussed during the interview, the Richardson reference does not teach or suggest the limitations recited in Claim 49, including, for example, the recited steps involving the first and second needle holders.

Therefore, Applicants respectfully submit that Claim 49 is allowable for at least these reasons. Allowance of Claims 43-49 is respectfully requested.

#### **No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

#### **CONCLUSION**

The undersigned has made a good faith effort to respond to all of the rejections in the case, and to place the claims and conditions for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.


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Filing Date: June 30, 2000

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By:   
Sabing H. Lee  
Registration No. 43,745  
Attorney of Record  
Customer No. 20995  
(949) 760-0404

5407423  
052008